

FILED

CLERKS OFFICE

BRCV2005-00145

McCafferty, as father and next friend of v. Lowe's Companies, Inc.

**File Date** 02/10/2005 **Status** Disposed: transferred to other court (dtrans)  
**Status Date** 03/28/2005 **Session** B - CtRm 2 - (Fall River)  
**Origin** 1 **Case Type** B04 - Other negligence/personal injury/prop  
**Lead Case** **Track** F

**Service** 05/11/2005 **Answer** 07/10/2005 **Rule 12/19/20** 07/10/2005  
**Rule 15** 07/10/2005 **Discovery** 12/07/2005 **Rule 56** 01/06/2006  
**Final PTC** 02/05/2006 **Disposition** 04/06/2006 **Jury Trial** Yes

## PARTIES

## Plaintiff

Thomas V. McCafferty, as father and next friend of  
 Mansfield, MA 02048  
 Active 02/10/2005

## Alias plaintiff name

Brynn S. Cafferty, a minor  
 Active 02/10/2005

## Private Counsel 305755

Bradford N Louison  
 Merrick Louison & Costello  
 67 Batterymarch Street  
 3rd Floor  
 Boston, MA 02110  
 Phone: 617-439-0305  
 Fax: 617-439-0325  
 Active 02/10/2005 Notify

\*\*\* See Attorney Information Above \*\*\*

## Defendant

Lowe's Companies, Inc.  
 North Attleboro, MA 02760  
 Served: 02/28/2005  
 Answered: 03/21/2005  
 Answered 03/21/2005

## Private Counsel 160830

Thomas C Federico  
 Morrison Mahoney LLP  
 250 Summer Street  
 Boston, MA 02210-1181  
 Phone: 617-439-7500  
 Fax: 617-439-7590  
 Active 03/21/2005 Notify

## Other interested party

FILE COPY  
 Active 02/10/2005 Notify

## ENTRIES

Date	Paper	Text
02/10/2005	1.0	Complaint & civil action cover sheet filed
02/10/2005		Origin 1, Type B04, Track F.

Case Summary

Civil Docket

**BRCV2005-00145**

**McCafferty, as father and next friend of v Lowe's Companies, Inc.**

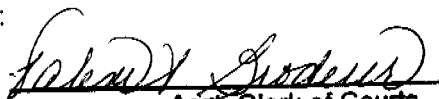
Date	Paper	Text
03/11/2005	2.0	SERVICE RETURNED (summons): Lowe's Companies, Inc., service made on February 28, 2005 (agent in charge service Pat Walker)
03/21/2005	3.0	ANSWER by Lowe's Companies, Inc. to COMPLAINT (claim of trial by jury reqstd)
03/28/2005	4.0	Notice for Removal to the United States District Court filed by Lowe's Companies, Inc.
03/28/2005		Case REMOVED this date to US District Court of Massachusetts

**EVENTS**

Date	Session	Event	Result
02/10/2005	CtRm Main - (Taunton)	Status: by clerk Initial One-trial Review	Event held as scheduled

A True Copy By Photostatic Process

Attest:

  
Asst. Clerk of Courts

#1

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT OF THE COMMONWEALTH  
SUPERIOR COURT DEPARTMENT

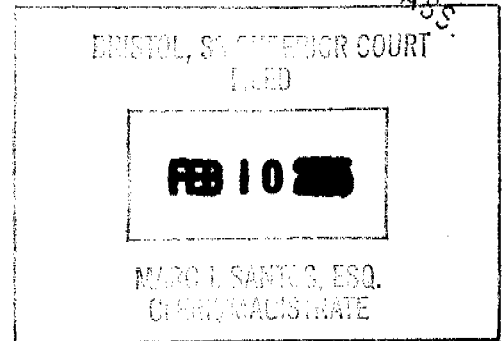
BRISTOL, SS

CA #: B05-0145

Thomas V. McCafferty,  
as father and next friend of  
Brynn S. McCafferty, a minor,  
Plaintiff

vs.

Lowe's Companies, Inc.,  
Defendant



COMPLAINT AND JURY CLAIM

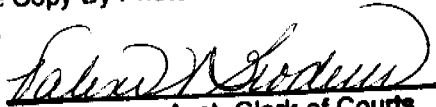
1. The plaintiff, Thomas V. McCafferty, as father and next friend of Brynn S. McCafferty, a minor, is a person with a residence at Mansfield, Bristol County, Massachusetts.
2. The Defendant is a corporation with a place of business at S. Washington St., North Attleboro, Bristol County, Massachusetts.
3. The Defendant is the owner and in control of a retail store located at the address above.
4. On June 24, 2003 while the minor plaintiff and her father were lawfully upon the premises of the defendant, the minor plaintiff and her father walked into an aisle where the defendant had negligently and carelessly permitted pallets to be lying on the floor, without any warning or guards, so that the premises were dangerous and unsafe for customers therein.
5. Said pallets were askew; some had bags of fertilizer on them, some had nothing on them.

6. The defendant, its agents, servants or employees negligently maintained the aisles of the store by reason of their leaving pallets laying across aisles where customers were obliged to walk.
7. As a result thereof, the minor plaintiff was caused to trip and fall, sustained serious injuries suffered great pain of body and mind, and her father was obliged to expend money for medical care and attendance.

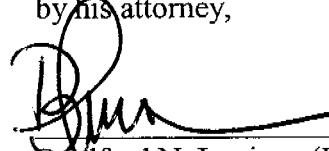
WHEREFORE: The plaintiff demands judgement against the defendant for damages to compensate the minor plaintiff and him for their loss, interest and costs.

THE PLAINTIFF DEMANDS A JURY TRIAL

A True Copy By Photostatic Process  
Attest:

  
Asst. Clerk of Courts

The plaintiff,  
by his attorney,



Bradford N. Louison (BBO # 305755)  
Merrick, Louison & Costello, LLP  
67 Batterymarch Street  
Boston, MA 02110  
(617) 439-0305

Feb. 8, 2005

**CIVIL ACTION  
COVER SHEET**

Docket No.(s)

B05-0145

**Trial Court of Massachusetts  
Superior Court Department**County: BRISTOL

## PLAINTIFF(S)

Thomas V. McCafferty, as father and  
next friend of Brynn McCafferty

## DEFENDANT(S)

Lowe's Companies, Inc.

## ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE

Bradford N. Louison, BBO# 305755  
Merrick, Louison & Costello, LLP  
67 Batterymarch St., Boston, MA 02110  
Board of Bar Overseers number:

## ATTORNEY (if known)

BRISTOL, SUPERIOR COURT  
FILED(617) 439-0305 **Origin code and track designation**

Place an x in one box only:

- ☒ 1. F01 Original Complaint
- ☐ 2. F02 Removal to Sup.Ct. C.231,s.104  
(Before trial) (F)
- ☐ 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

- ☐ 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
- ☐ 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
- ☐ 6. E10 Summary Process Appeal (X)

FEB 10 2005

**TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)**

CODE NO.

TYPE OF ACTION (specify)

TRACK

IS THIS A JURY CASE?

B04

Personal Injury

(F)

(x) Yes

( ) No

**The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.**

**TORT CLAIMS**

(Attach additional sheets as necessary)

## A. Documented medical expenses to date:

- |                                    |                                  |                             |
|------------------------------------|----------------------------------|-----------------------------|
| 1. Total hospital expenses         | Sturdy Memorial Hospital         | \$ 725.00                   |
| 2. Total Doctor expenses           | Neponset Valley Orthopedics      | \$ 455.00                   |
| 3. Total chiropractic expenses     |                                  | \$                          |
| 4. Total physical therapy expenses | Mansfield Physical Therapy       | \$ 3,650.00                 |
| 5. Total other expenses (describe) | Southern N.E. Orthopedic Surgery | \$ 1,548.75                 |
|                                    |                                  | <b>Subtotal \$ 6,378.75</b> |

## B. Documented lost wages and compensation to date

## C. Documented property damages to date

## D. Reasonably anticipated future medical and hospital expenses

## E. Reasonably anticipated lost wages

## F. Other documented items of damages (describe)

## G. Brief description of plaintiff's injury, including nature and extent of injury (describe)

Fractured distal humerus/elbow. Limited ROM with left  
arm seven months post accident

\$ 30,000.00

**TOTAL \$ 41,378.75****CONTRACT CLAIMS**

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

**TOTAL \$ .**

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

**"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."**

Signature of Attorney of Record

DATE: 2/8/05

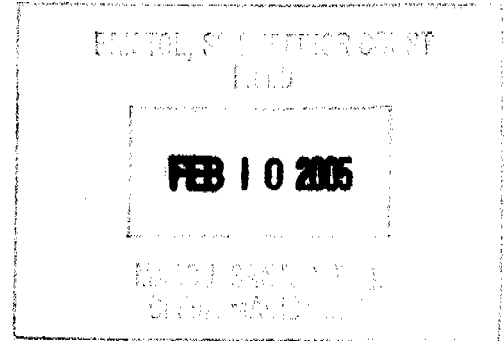
**MERRICK, LOUISON & COSTELLO, LLP**

ATTORNEYS AT LAW

**67 BATTERYMARCH STREET  
BOSTON, MASSACHUSETTS 02110****TELEPHONE: (617) 439-0305  
FACSIMILE: (617) 439-0325  
www.merricklc.com**

February 8, 2005

Clerk of the Court-Civil  
Bristol Superior Court  
9 Court Street, Room 13  
Taunton, MA 02780



**Re: Thomas V. McCafferty, as father and next friend of  
Brynn S. McCafferty, a Minor, v. Lowe's Companies, Inc.  
Bristol Superior Court Civil Action No: 1305-0145**

Dear Sir/Madam:

Enclosed herewith for filing, relative to the above-entitled matter, please find the following:

1. Complaint and Jury Claim;
2. Civil Action Cover Sheet;
3. Check in the amount of \$280.00 for the filing of the Complaint and Summons.  
Please return the Summons and docket number in the enclosed self-addressed stamped envelope.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "Bradford N. Louison".  
Bradford N. Louison

BNL/mob  
Enclosure

## COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPT. OF THE TRIAL COURT

CIVIL ACTION

[SEAL]

No. B05-0145

Thomas V. McCafferty, As Father  
and Next Friend of Brynn McCafferty,  
A Minor, Plaintiff(s)

v.

Lowe's Companies, Inc., Defendant(s)

(TO PLAINTIFF'S ATTORNEY :

PLEASE INDICATE TYPE OF ACTION INVOLVED:

TORT — MOTOR VEHICLE TORT — CONTRACT

EQUITABLE RELIEF — OTHER.)

## SUMMONS

TO THE ABOVE-NAMED DEFENDANT: Lowe's Companies, Inc.

You are hereby summoned and required to serve upon Bradford N. Louison of Merrick, Louison & Costello, LLP plaintiff's attorney, whose address is 67 Batterymarch St., Boston, MA 02110; an answer to the complaint which is herewith served upon you, within (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this Court at Taunton, either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Hon. Barbara J. Rouse, Adm. Justice of the Superior Court Dept. of the Trial Court, at Taunton, the 16th day of February, in the year of our Lord two thousand and five

A True Copy By Photostatic Process

Attest:

*[Signature]*  
NOTES  
Asst. Clerk of Courts

*[Signature]*  
Magistrate

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. If the Commonwealth or an officer of agency thereof is a defendant, the time to be inserted is 60 days.

COMMONWEALTH OF MASSACHUSETTS

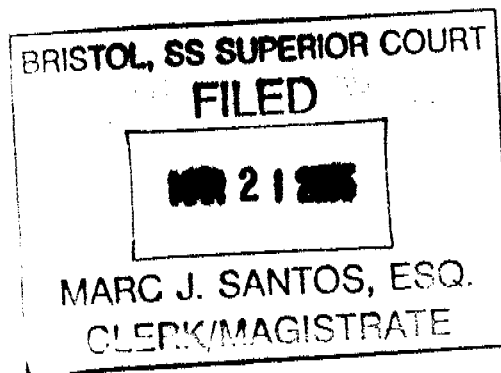
BRISTOL, SS

SUPERIOR COURT  
CIVIL ACTION NO: 05-0145

THOMAS V. MCCAFFERTY,  
as father and next of friend of  
BRYNN S. MCCAFFERTY, a minor,  
Plaintiff,

v.

LOWE'S COMPANIES, INC.,  
Defendant.



**ANSWER AND JURY DEMAND OF THE DEFENDANT, LOWE'S COMPANIES, INC.**

Defendant Lowe's Companies, Inc. ("Lowe's") responds to the plaintiff's Complaint paragraph by paragraph as follows:

1. Lowe's is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1.
2. Lowe's denies the allegations contained in Paragraph 2.
3. Lowe's denies the allegations contained in Paragraph 3.
4. Lowe's denies the allegations contained in Paragraph 4.
5. Lowe's denies the allegations contained in Paragraph 5.
6. Lowe's denies the allegations contained in Paragraph 6.
7. Lowe's denies the allegations contained in Paragraph 7.

WHEREFORE, Lowe's denies that the plaintiff is entitled to judgment or relief in any amount.

**FIRST AFFIRMATIVE DEFENSE**

The plaintiff's Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Lowe's denies each and every allegation of the plaintiff's Complaint except as specifically admitted above.



**THIRD AFFIRMATIVE DEFENSE**

The plaintiff has misnamed the defendant.

**FOURTH AFFIRMATIVE DEFENSE**

Lowe's is not guilty of any negligence.

**FIFTH AFFIRMATIVE DEFENSE**

The negligence of the plaintiff was greater than the alleged negligence of Lowe's and such negligence of the plaintiff contributed to the plaintiff's alleged injuries; therefore, the plaintiff is barred from recovery under M.G.L. Chapter 231 Section 85.

**SIXTH AFFIRMATIVE DEFENSE**

The plaintiff is guilty of contributory negligence and the damages, if any, recovered by the plaintiff from Lowe's should be reduced in proportion to the said negligence of the plaintiff in accordance with M.G.L. Chapter 231 Section 85.

**SEVENTH AFFIRMATIVE DEFENSE**

If the plaintiff suffered injuries as alleged, such injuries were a result of the plaintiff's breach of duty to exercise due care to protect and ensure the plaintiff's own safety.

**EIGHTH AFFIRMATIVE DEFENSE**

The damage the plaintiff alleges was caused in whole or in part by the plaintiff's own negligence.

**NINTH AFFIRMATIVE DEFENSE**

If the plaintiff was injured as alleged, such injuries were due to the intervening or superseding acts or negligence of another, for which Lowe's is not liable.

**TENTH AFFIRMATIVE DEFENSE**

The plaintiff's alleged injuries and damages were not proximately caused by Lowe's.

**ELEVENTH AFFIRMATIVE DEFENSE**

If the plaintiff suffered damages as alleged, someone for whose conduct Lowe's was not and is not legally responsible caused such damages.

**TWELFTH AFFIRMATIVE DEFENSE**

Lowe's reserves the right to add such other and further defenses as become apparent during the course of discovery.


**THIRTEENTH AFFIRMATIVE DEFENSE**

The plaintiff's Complaint has been filed in an improper venue, warranting dismissal or, in the alternative, transfer of the case to a more appropriate venue in accordance with M.G.L. Chapter 223.

**JURY CLAIM**

Lowe's demands a trial by jury as to all issues.

Defendant,  
Lowe's Companies, Inc.,  
By its Attorneys,

  
Thomas C. Federico, BBO #160830  
Jacy L. Wilson, BBO #658923  
Morrison Mahoney LLP  
250 Summer Street  
Boston, MA 02210  
(617) 439-7500

Dated: March 14, 2005

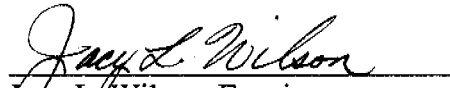
A True Copy By Photostatic Process  
Attest:

  
Asst. Clerk of Courts

**CERTIFICATE OF SERVICE**

I, Jacy L. Wilson, hereby certify that a true and correct copy of the foregoing document was served by mail upon the following attorney of record on March 17, 2005:

Bradford N. Louison, Esquire  
Merrick, Louison & Costello, LLP  
67 Batterymarch Street  
Boston, MA 02110

  
Jacy L. Wilson, Esquire

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPERIOR COURT  
CIVIL ACTION NO: 05-0145

THOMAS V. MCCAFFERTY,  
as father and next of friend of  
BRYNN S. MCCAFFERTY, a minor,  
Plaintiff,

v.

LOWE'S COMPANIES, INC.,  
Defendant.

BRISTOL, SS SUPERIOR COURT

FILED

MAR 28 2005

MARC J. SANTOS, ESQ.  
CLERK/MAGISTRATE


**NOTICE TO STATE COURT OF NOTICE OF REMOVAL TO FEDERAL COURT**

Please take notice that on March 23, 2005, pursuant to Title 28, United States Code, Sections 1441 and 1446, the above-captioned action was removed to the United States District Court for the District of Massachusetts. In accordance with Title 28, United States Code, Section 1446(d), a certified copy of said notice of removal is attached as Exhibit 1.

Respectfully submitted,  
Defendant,  
Lowe's Companies, Inc.,  
By its Attorneys,

A True Copy By Photostatic Process  
Attest:

  
Asst. Clerk of Courts

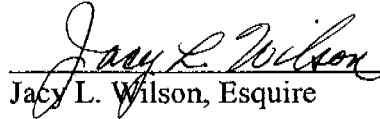
  
Thomas C. Federico, BBO #160830  
Jacy L. Wilson, BBO #658923  
Morrison Mahoney LLP  
250 Summer Street  
Boston, MA 02210  
(617) 439-7500

Dated: March 24, 2005

CERTIFICATE OF SERVICE

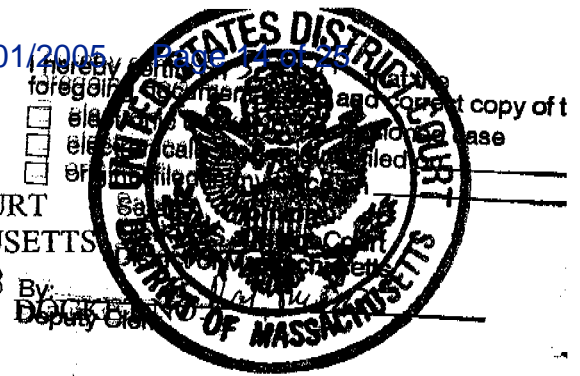
I, Jacy L. Wilson, hereby certify that a true and correct copy of the foregoing document was served by mail upon the following attorney of record on March 24, 2005:

Bradford N. Louison, Esquire  
Merrick, Louison & Costello, LLP  
67 Batterymarch Street  
Boston, MA 02110

  
\_\_\_\_\_  
Jacy L. Wilson, Esquire

FILED  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

2005 MAR 23 P 2:58



THOMAS V. MCCAFFERTY,  
as father and next of friend of  
BRYNN S. MCCAFFERTY, a minor,  
Plaintiff,

v.

LOWE'S COMPANIES, INC.,  
Defendant.

U.S. DISTRICT COURT  
DISTRICT OF MASS.

**05-10558 RWZ**

**NOTICE OF REMOVAL**

**TO THE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

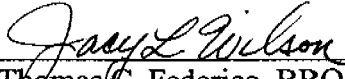
Pursuant to 28 U.S.C. § 1446(a), the defendant, Lowe's Companies, Inc., hereby invokes this Court's jurisdiction under the provisions of 28 U.S.C. §§ 1332 and 1441(a) and states the following grounds for removal:

1. On February 10, 2005, the plaintiff filed a negligence action, styled and captioned as above and assigned Civil Action No. 05-0145, against the defendant in Bristol Superior Court.
2. The plaintiff served the Summons, Complaint, Civil Action Cover Sheet, and Tracking Order upon the defendant on or about February 28, 2005.
3. The Summons, Complaint, Civil Action Cover Sheet, and Tracking Order, constitute all process, pleadings, and orders served on the defendant to date in this action. Copies of each are attached as Exhibit A.
4. Having been filed within 30 days of service of the Summons and Complaint upon the defendant, this Notice of Removal to the United States District Court has been filed in a

- timely manner pursuant to the provisions of 28 U.S.C. § 1446(b). See Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 347-48, 119 S. Ct. 1322, 1325 (1999).
5. The defendant has provided written notice, as required by 28 U.S.C. § 1446(d), to the adverse party and clerk of the state court in which this case was initially filed.
  6. Jurisdiction exists over this removed action, pursuant to 28 U.S.C. § 1441, because this action could originally have been filed in this Court, pursuant to 28 U.S.C. § 1332(a)(1), on the basis that there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000:
    - a. The defendant, Lowe's Companies, Inc., is a North Carolina corporation with its principal place of business in Wilkesboro, North Carolina.
    - b. Based on the Complaint, the plaintiff is an individual residing in Mansfield, Massachusetts.
    - c. Based on the plaintiff's \$92,000 initial demand for settlement, the amount in controversy exceeds \$75,000. A copy of the demand letter is attached as Exhibit B.
  7. Pursuant to 28 U.S.C. §§ 101 and 1441(a), the United States District Court for the District of Massachusetts is the proper forum for removal of the state court action which was commenced in Bristol Superior Court.

WHEREFORE, the defendant requests that the action pending in Bristol County be removed therefrom to this Court and proceed as an action properly so removed.

Respectfully submitted,  
The defendant,  
Lowe's Companies, Inc.,  
By its Attorneys

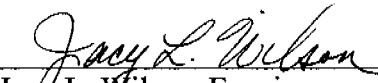
  
Thomas C. Federico, BBO #160830  
Jacy L. Wilson, BBO #658923  
Morrison Mahoney LLP  
250 Summer Street  
Boston, MA 02210  
Tel. (617) 439-7500

Dated: March 23, 2005

CERTIFICATE OF SERVICE

I, Jacy L. Wilson, hereby certify that a true and correct copy of the foregoing document was served by mail upon the following attorney of record on March 23, 2005:

Bradford N. Louison, Esquire  
Merrick, Louison & Costello, LLP  
67 Batterymarch Street  
Boston, MA 02110

  
Jacy L. Wilson, Esquire



COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT OF THE COMMONWEALTH  
SUPERIOR COURT DEPARTMENT

BRISTOL, SS

CA #: **B**05-0145

Thomas V. McCafferty,  
as father and next friend of  
Brynn S. McCafferty, a minor,  
Plaintiff

vs.

Lowe's Companies, Inc.,  
Defendant

COMPLAINT AND JURY CLAIM

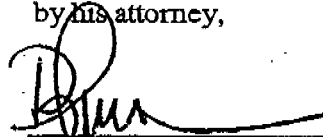
1. The plaintiff, Thomas V. McCafferty, as father and next friend of Brynn S. McCafferty, a minor, is a person with a residence at Mansfield, Bristol County, Massachusetts.
2. The Defendant is a corporation with a place of business at S. Washington St., North Attleboro, Bristol County, Massachusetts.
3. The Defendant is the owner and in control of a retail store located at the address above.
4. On June 24, 2003 while the minor plaintiff and her father were lawfully upon the premises of the defendant, the minor plaintiff and her father walked into an aisle where the defendant had negligently and carelessly permitted pallets to be lying on the floor, without any warning or guards, so that the premises were dangerous and unsafe for customers therein.
5. Said pallets were askew; some had bags of fertilizer on them, some had nothing on them.

6. The defendant, its agents, servants or employees negligently maintained the aisles of the store by reason of their leaving pallets laying across aisles where customers were obliged to walk.
7. As a result thereof, the minor plaintiff was caused to trip and fall, sustained serious injuries suffered great pain of body and mind, and her father was obliged to expend money for medical care and attendance.

WHEREFORE: The plaintiff demands judgement against the defendant for damages to compensate the minor plaintiff and him for their loss, interest and costs.

THE PLAINTIFF DEMANDS A JURY TRIAL

The plaintiff,  
by his attorney,



Bradford N. Louison (BBO # 305755)  
Merrick, Louison & Costello, LLP  
67 Batterymarch Street  
Boston, MA 02110  
(617) 439-0305

Feb. 8, 2003

<b>CIVIL ACTION COVER SHEET</b>	DOCKET NO.(S)	<b>Trial Court of Massachusetts Superior Court Department</b> County: _____
PLAINTIFF(S) Thomas V. McCafferty, as father and next friend of Brynn McCafferty		DEFENDANT(S) Lowes Companies, Inc.
ATTORNEY FIRM NAME ADDRESS AND TELEPHONE Bradford N. Louison, BBO# 305755 Merrick, Louison & Costello, LLP 67 Batterymarch St., Boston, MA 02110 <small>Board of Bar Overseers Number:</small>		ATTORNEY (if known)
(617) 439-0305 <b>Origin code and track designation</b>		
Place an x in one box only:		
<input checked="" type="checkbox"/> 1. F01 Original Complaint		<input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
<input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)		<input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
<input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)		<input type="checkbox"/> 6. E10 Summary Process Appeal (X)
<b>TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)</b>		
CODE NO.	TYPE OF ACTION (specify)	TRACK
B04	Personal Injury (F)	(x) Yes ( ) No
IS THIS A JURY CASE?		
The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.		
<b>TORT CLAIMS</b> (Attach additional sheets as necessary)		
A. Documented medical expenses to date:		
1. Total hospital expenses .. Sturdy Memorial Hospital .....		\$ 725.00
2. Total Doctor expenses ... Neponset Valley Orthopedics .....		\$ 455.00
3. Total chiropractic expenses .....		\$
4. Total physical therapy expenses Mansfield Physical Therapy .....		\$ 3,650.00
5. Total other expenses (describe) Southern N.E. Orthopedic Surgery .....		\$ 548.75
		Subtotal \$ 6,378.75
B. Documented lost wages and compensation to date .....		\$
C. Documented property damages to date .....		\$
D. Reasonably anticipated future medical and hospital expenses .....		\$ 5,000.00
E. Reasonably anticipated lost wages .....		\$
F. Other documented items of damages (describe) .....		\$
G. Brief description of plaintiff's injury, including nature and extent of injury (describe)		\$
Fractured distal humerus/elbow. Limited ROM with left arm seven months post accident		\$ 30,000.00
		<b>TOTAL \$ 41,378.75</b>
<b>CONTRACT CLAIMS</b> (Attach additional sheets as necessary)		
Provide a detailed description of claim(s):		
		TOTAL \$.
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT		
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."		
Signature of Attorney of Record <i>[Signature]</i>		DATE: 2/9/03

**Commonwealth of Massachusetts  
County of Bristol  
The Superior Court**

CIVIL DOCKET# BRCV2005-00145-B

**RE: McCafferty, as father and next friend of v Lowe's Companies, Inc.**

**TO: Bradford N Louison, Esquire  
Merrick Louison & Costello  
67 Batterymarch Street  
3rd Floor  
Boston, MA 02110**

**TRACKING ORDER - F TRACK**

You are hereby notified that this case is on the **fast (F) track** as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

<b><u>STAGES OF LITIGATION</u></b>	<b><u>DEADLINE</u></b>
Service of process made and return filed with the Court	05/11/2005
Response to the complaint filed (also see MRCP 12)	07/10/2005
All motions under MRCP 12, 19, and 20 filed	07/10/2005
All motions under MRCP 15 filed	07/10/2005
All discovery requests and depositions completed	12/07/2005
All motions under MRCP 56 served and heard	01/06/2006
Final pre-trial conference held and firm trial date set	02/05/2006
Case disposed	04/06/2006

The final pre-trial deadline is **not the scheduled date of the conference**. You will be notified of that date at a later time.

**Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.**

**This case is assigned to session B sitting in CtRm 2 (Fall River) at Bristol Superior Court.**

Dated: 02/10/2005

Marc J. Santos  
Clerk of the Courts

BY: Joseph T. Vincent / Peter R. Andrade  
Assistant Clerk

Location: CtRm 2 (Fall River)  
Telephone: (508) 672-4464

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

Check website as to status of case: <http://ma-trialcourts.org/tcic>

Form #42

## COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPT. OF THE TRIAL COURT

CIVIL ACTION

[SEAL]

No. B05-0145

Thomas V. McCafferty, As Father  
and Next Friend of Brynn McCafferty,  
A Minor, Plaintiff (s)

v.

Lowe's Companies, Inc., Defendant(s)

(TO PLAINTIFF'S ATTORNEY :

PLEASE INDICATE TYPE OF ACTION INVOLVED :—  
TORT — MOTOR VEHICLE TORT — CONTRACT —  
EQUITABLE RELIEF — OTHER.)

## SUMMONS

TO THE ABOVE-NAMED DEFENDANT: Lowe's Companies, Inc.

You are hereby summoned and required to serve upon Bradford N. Louison  
of Merrick, Louison & Costello, LLP  
plaintiff's attorney, whose address is 67 Batterymarch St. Boston, MA 02110;

an answer to the complaint which is herewith served upon you, within (20) days after  
service of this summons upon you, exclusive of the day of service. If you fail to do so,  
judgment by default will be taken against you for the relief demanded in the complaint.  
You are also required to file your answer to the complaint in the office of the Clerk of this  
Court at Taunton either before service upon plaintiff's attorney or within a  
reasonable time thereafter.

Unless otherwise provided by Rule 13 (a), your answer must state as a counterclaim  
any claim which you may have against the plaintiff which arises out of the transaction or  
occurrence that is the subject matter of the plaintiff's claim or you will thereafter be  
barred from making such claim in any other action.

Witness, Hon. Barbara J. Rouse, Adm. Justice of the Superior Court Dept. of the Trial  
Court, at Taunton, the 16th day of February, in the year  
of our Lord two thousand and five

A TRUE ATTESTED COPY

Magistrate

NOTES: BRISTOL COUNTY DEPUTY SHERIFF

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. If the Commonwealth or an officer of agency thereof is a defendant, the time to be inserted is 60 days.

NOTICE TO DEFENDANT — You need not appear personally in Court to answer the  
complaint, but if you claim to have a defense, either you or your attorney must serve a  
copy of your written answer within 20 days as specified herein and also file the original  
in the Clerk's Office.

KXB

**MERRICK, LOUISON & COSTELLO, LLP**

ATTORNEYS AT LAW

67 BATTERYMARCH STREET  
BOSTON, MASSACHUSETTS 02110

TELEPHONE: (617) 439-0305

FACSIMILE: (617) 439-0325

www.merrickle.com

September 14, 2004

Elizabeth Cohar, Account Representative  
Speciality Risk Services  
P.O. Box 29618  
Charlotte, NC 28229

Re: Account: Lowe's Store  
Claimant: McCafferty, Brynn  
Claim No: CFA 50100  
Date of Loss: 6/24/03

Dear Ms. Cohar:

Please accept this letter as a demand for settlement on behalf of the minor Brynn McCafferty with regards to the injuries suffered at the Lowe's Store in Attleboro, Massachusetts.

**Demand**

The demand for settlement based on the liability (as discussed below) and the injuries and medical special damages is ninety two (\$92,000.00) thousand dollars

**Liability**

Brynn McCafferty, DOB: 3/22/97 was six years old on June 24, 2003, the date of accident when she and her father and sister went to the Lowe's Store, located at South Washington Street, North Attleboro, MA at approximately 12:30 p.m. (See attached photograph of Brynn with cast taken shortly after the accident.) The father, a police officer in the Town of North Attleboro was off duty and was shopping for fertilizer and other items. They walked into the store and went into the nursery section. As the three went down one aisle they turned right to come back up another aisle and as Mr. McCafferty stated to me, as soon as they came around the corner there were two or three empty pallets lying askew on the floor. Approximately six feet in front of those empty pallets were two pallets, in the middle of the aisle which were had fertilizer bags on them stacked chest high. As Mr. McCafferty walked around the corner, his daughter, Brynn, who was walking right behind him, tripped over the scattered empty pallets.

MERRICK, LOUISON & COSTELLO, LLP

Elizabeth Cohar, Account Representative  
September 14, 2004  
Page 2

Mr. McCafferty saw his daughter Brynn holding her left arm and she said to him, "Daddy I fell." At that point in time she was "whining" not crying, so Mr. McCafferty bought his fertilizer and paid for it with a credit card (enclosed please find the credit card slip for that purchase). Mr. McCafferty noticed that the skin on Brynn's arm looked flabby but went home in his car. Shortly thereafter he looked at his daughter's arm and it was extremely swollen. They then went to the ER at the Sturdy Memorial Hospital in Attleboro, MA. The arm was x-rayed and it was determined that it was broken in the left elbow. The doctor at that time said to wait for the swelling to go down. The next day, however, her left arm had swollen so they went back to the emergency room.

A further discussion on the injury and the medical care is described below.

Under the laws of the Commonwealth of Massachusetts, Lowe's is required to provide a safe environment for its shoppers. It is our position that leaving empty pallets lying scattered in an aisle right at the edge of the aisle is negligent in that it is reasonable to assume that a person who is walking around the corner of the aisle may be looking up at merchandise on the shelves and not see these pallets lying on the floor. There is no evidence that the McCafferty's were doing anything other than walking around the corner like any other shopper. Brynn McCafferty and her sister were not running or horsing around, they were simply walking behind their father. Such an accident could occur just as likely with an adult.

It is our position that the pallets left lying askew is a defect rendering Lowe's liable to the plaintiff for her injuries suffered as a result of falling over those pallets. A land owner owes a common duty of care to all lawful visitor and must maintain his property in a reasonably safe condition in view of the all the circumstances. Mounsey v. Ellard, 363 Mass. 693, 287 N.E. 2d 43 (1973). It is our position that this risk was not obvious since it would be difficult for a person who is walking around the aisle to notice these pallets because there was not enough time to see them as you approached them coming around the corner.

**Injury/Medical**

Brynn McCafferty treated at the Sturdy Memorial Hospital Emergency Room, Dr. Kenneth Guild, M.D., Southern New England Orthopedic Surgery and Sports Medicine, P.C., Dr. Philip Bentley and Mansfield Physical Therapy. Enclosed please find copies of all the medical bills and reports from those providers.

As you can see in Dr. Guild's notes of September 17, 2003, Brynn still lacked full flexion; still limited as of October 30, 2003 and still with problems as of December 17, 2003. As you will see in the attached medical reports it is unclear how or when that will improve and at this time we are considering it to be a permanent injury.



MERRICK. LOUISON & COSTELLO, LLP

Elizabeth Cohar, Account Representative  
September 14, 2004  
Page 3

You will see in the report of Dr. Bentley dated December 31, 2003, where he stated that at that time it was unclear to him whether or not this flexion problem will improve because at that time it had not. (Please see attached.)

In order to improve her arm use, Brynn McCafferty was referred to physical therapy and attended such therapy primarily at the Mansfield Physical Therapy in Mansfield, MA. (Neponset Valley Orthopedics is for Dr. Bentley).

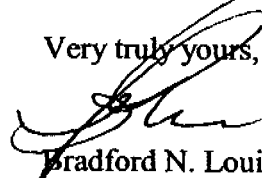
I also have a copy of Brynn's X-ray if you would like to have that copied and review, please let me know.

I have attached herewith copies of all the medical bills which I have in my possession which by my calculation totals the following:

Sturdy Memorial Hospital	\$725.00
Neponset Valley Orthopedics	\$455.00
Mansfield Physical Therapy, Inc.	\$3,650.00
Southern New England Orthopedic Surgery and Sports Medicine, P.C.	\$1,548.75
Total:	\$6,378.75

If you would like to discuss the matter further, I look forward to hearing from you. It is our position that this condition may in fact be permanent although it is hoped that over time she will improve. We believe that the demand is fair under the circumstances particularly in the event that this condition becomes permanent. If the case went to trial with proof of a permanent injury a jury verdict would be considerably higher. Most if not all of the medical bills were paid by the family's Blue Cross Blue Shield Health Plan for which I have received a notice of lien a copy of which is enclosed herewith.

Very truly yours,



Bradford N. Louison

BNL/mob  
Enclosure  
P:\PERSONAL INJURY\McCafferty\Demand Letter.wpd



# MORRISON MAHONEY LLP

COUNSELLORS AT LAW

Jacy L. Wilson  
Phone: 617-737-8865  
Fax: 617-342-4850  
jwilson@morrisonmahoney.com

250 SUMMER STREET  
BOSTON, MASSACHUSETTS 02210-1181  
617-439-7500

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PROVIDENCE	LONDON

March 24, 2005

Civil Clerk's Office  
Bristol Superior Court  
9 Court Street, Room 13  
Taunton, MA 02780

Re: McCafferty v. Lowe's Companies, Inc.  
Civil Action No.: 05-0145  
Our File No.: 10017838

Dear Sir or Madam:

Enclosed please find a Notice to State Court of Notice of Removal to Federal Court in connection with the above-referenced action. The Notice of Removal, a certified copy of which is attached to the Notice to State Court, was filed in the United States District Court for the District of Massachusetts on March 23, 2005.

As per the Federal Rules, I am required to submit to the Federal Court certified copies of all records and pleadings in the State Court, as well as a certified copy of the docket sheet, within thirty (30) days of filing the Notice of Removal.

By this correspondence, I request such materials. To that end, kindly contact me at the above telephone number at your earliest convenience to inform me of the total cost for obtaining certified copies of the above-requested materials.

I appreciate your cooperation in this matter. If you have any questions or require any additional materials, please do not hesitate to contact me.

Sincerely,



Jacy L. Wilson

Enclosure

cc: Bradford N. Louison, Esquire (*via Certified Mail*)